

ORDINANCE NO. 49-751

AN ORDINANCE AMENDING SECTIONS 3.30.020, 3.30.070, 3.30.075 AND 5.48.050 AND CREATING SECTIONS 5.05.010, 5.05.020, 5.05.030, 5.05.040, 5.48.035 AND 5.48.038 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE OLD TOWN ENTERTAINMENT DISTRICT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.30.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"Definitions. The following words, as used in this Chapter, have the meanings set forth below:

‘Abutting’ means touching or directly contiguous to.

‘Adjacent’ means an area which is no further than twenty-five feet from the licensed premises, unless otherwise provided by a specific section of this Code.

‘Alcoholic beverage’ means any alcoholic liquor or any cereal malt beverage as those terms are defined by Sections 4.04.010(b) and 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

‘Art’ or ‘fine art’ means works that are visual in nature, including, but not limited to, paintings, drawings, watercolors, graphics, sculptures, prints, ceramics, textiles and photos which are created by an artist to display or sell and produced or intended primarily for aesthetic purposes rather than utility.

‘Art gallery’ means any establishment whose primary purpose is to exhibit and/or offer for sale works of fine art or precious/semi-precious metals. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 200 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of an art gallery, such sales shall conform with all applicable state and city laws regulating the same.

‘Ambient music’ means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, ‘DJ’ or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

‘Chief of Police’ means the Chief of the Wichita Police Department or his/her designee.

‘Coffee shop’ means any establishment whose primary purpose is to serve coffee or teas along with food items. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a coffee shop, such sales shall conform with all applicable state and city laws regulating the same.

‘Entertainment’ means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the

public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

- (a) Dancing by patron(s) to live or recorded music.
- (b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ, or
- (c) The presentation of live music whether amplified or un-amplified, or
- (d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or
- (e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

'Entertainment Establishment(s)' means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

‘Entertainment License’ means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Public Works and Utilities or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

- (a) Hire or terminate employees; or

(b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

‘Music’ as used in this Chapter shall not apply to radios or ambient music.

‘Music store / music only venue’ shall mean any establishment that sells musical instruments or offers music lessons or offers open jam session opportunities to musicians. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a music store/music only venue, such sales shall conform with all applicable state and city laws regulating the same.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

‘Non-profit organization’ means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

‘Office of Central Inspection’ means and includes the Metropolitan Area Building and Construction Department.

‘Person’ means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours.

‘Responsible Person’ means any person who is any of the following:

- a. The person who owns the Entertainment Establishment or teen club; or
- b. The person in charge of the Entertainment Establishment or teen club; or
- c. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or
- d. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Director of the Metropolitan Area Building and Construction Department or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

- a. an accredited public or private school or college;
- b. property owned or controlled by the federal, state, or local government;
- c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility’s primary purposes.”

SECTION 2. Section 3.30.070 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: “**Hours of operation.**

- (a) It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. No person, except an employee, licensee, owner, manager or responsible person shall be on the licensed premises of a teen club and the premises shall be closed between the hours of midnight and 7:00 a.m.
- (b) Other than those types of establishments set forth in subsection (d), it shall be unlawful for any licensee, owner, manager or responsible person of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. No person, except an employee, licensee, owner, manager or

responsible person shall be on the licensed premises of an entertainment establishment and the premises shall be closed between the hours of 2:00 a.m. and 7:00 a.m.

- (c) For the purposes of this section, “employee” shall be defined as an individual who is employed by, works on or upon the licensed premises and receives financial compensation from the licensee.
- (d) For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store/music only venue as those terms are defined in Section 3.30.020, it shall be unlawful for any licensee, owner, manager or responsible person of such an establishment to permit or allow entertainment between the hours of 2:00 a.m. and noon. Provided, however, music student recitals, music lessons, or closed recording sessions may be conducted at anytime the premises are open. Such premises shall be closed between the hours of 2:00 a.m. and 5:00 a.m.
- (e) At closing time, all entertainment establishments and teen clubs shall conform to the following procedures:
 - (1) The lights are to be fully illuminated;
 - (2) The music, dancing or other live entertainment is to be stopped;
 - (3) For establishments that sell and/or allow the serving and consumption of alcoholic liquor, all alcoholic liquor is to be

removed from all tables and no patron shall be in possession of any alcoholic liquor; and

- (4) Patrons are to be directed to vacate the premises in a timely and orderly manner as required by Section 3.30.075 of this Code.”

SECTION 3. Section 3.30.075 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“Failure to exit, disperse or vacate premises in a timely manner prohibited.**

- (a) No licensee, owner, manager or any responsible person of an entertainment establishment, shall permit or allow any person to remain in or upon the licensed premises of the entertainment establishment or remain in or upon the property abutting or adjacent thereto between the hours of one a.m. and seven a.m.
- (b) No licensee, owner, manager or any responsible person, shall permit or allow any person to remain in or upon the property of the licensed premises of a teen club or remain in or upon the property abutting or adjacent thereto between the hours of midnight and seven a.m.
- (c) All licensees, owners, managers or any other responsible person, shall direct patrons to vacate in a timely and orderly manner the licensed premises of an entertainment establishment or teen club and all property abutting or adjacent thereto, including parking lots.

- (d) All licensees, owners, managers or any other responsible person shall ensure that reasonable measures are in place and reasonable efforts are made to deter disorderly conduct on the property adjacent to the premises and to minimize damage, nuisance or other harm to such property arising out of disorderly conduct engaged in by patrons of the licensee or persons attempting or waiting to enter the licensed premises and/or leaving the licensed premises.
- (e) As used in this section, “vacate in a timely and orderly manner” means a person shall not remain in or upon the property or licensed premises, without just or legal cause, after being asked to leave by the owner, licensee, manager, responsible person or person entitled to possession or in control of the property thereof or willfully impede other persons from vacating the premises in a timely and orderly manner.
- (f) As used in this section, “reasonable measures” include, but are not limited to, requesting disorderly patrons outside of the establishment to disperse, calling law enforcement if a dispute escalates to a public disturbance, properly monitor and staff waiting lines to enter into the establishment, ban patrons who have been disorderly in the past, having sufficient and properly trained staff to patron ratios and having an approved safety plan in place as required by Section 3.30.080(b)(4).

- (g) Law enforcement officers of the City of Wichita or other individuals designated by the City may request persons to vacate, disperse, or leave property abutting or adjacent to a licensed establishment upon request of the owner of said property.
- (h) For the purposes of this section, law enforcement officers shall be considered to be “in control” of all city owned property including parking lots abutting or adjacent to licensed premises.”

SECTION 4. Section 5.05.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“WHEREAS, the City of Wichita has encouraged and nurtured the development of the areas in and around the Old Town Entertainment District as an area where citizens live, work, do business, shop, access dining and participate in community events; and

WHEREAS, the City of Wichita has experienced unique enforcement issues and challenges with regard to the policing of this diverse entertainment area;

WHEREAS, the occurrence of criminal activity in the Old Town Entertainment District and areas adjacent thereto continues to occur despite law enforcement’s increased efforts and presence within this district; and

WHEREAS, the City has determined that the presence of persons loitering in public places within the Old Town Entertainment District and committing crimes within this area contributes significantly to this unacceptable situation regarding the continued safety of patrons, residents and property in the area; and

WHEREAS, the City has an important governmental interest in protecting the health, safety, and welfare of its citizenry; to protect citizens from crime; preserve the quality of life; preserve property values and business investments; preserve the character of the Old Town Entertainment District and deter the spread of blight; and

WHEREAS, the City of Wichita enacts the ordinances codified in Chapter 5.05 to increase penalties for certain reoccurring crimes in this area as aggressive action necessary to preserve the streets and other public places within said District, the quality of life, property values, and business investments so that the public may use such places.”

SECTION 5. Section 5.05.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Definitions. The following words, as used in this Chapter, have the meanings set forth below:

‘Chief of Police’ means the Chief of the Wichita Police Department or his/her designee.

‘Old Town Entertainment District’ means that area of the City of Wichita bounded by: Central on the North including all property abutting Central to the North, Wabash on the East, including all property abutting Wabash to the East, St. Francis Street on the West, including all property abutting St. Francis to the West, and Douglas on the South including all property abutting Douglas to the South.”

SECTION 6. Section 5.05.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows: **“Offenses within the Old Town Entertainment District.**

- (a) Any person who is convicted of violating any of the following ordinances within the Old Town Entertainment District shall be subject to a mandatory minimum fine of \$500.00 unless a higher mandatory minimum fine is required to be imposed by the court by the provisions of underlying charging ordinance due to the defendant's prior criminal history. Such minimum mandatory fine shall be in addition to any term of imprisonment set forth in the charging ordinance.
- (1) Chapter 5.10 – Assault and Battery
 - (2) Chapter 5.24 – Disorderly Conduct
 - (3) Chapter 5.26 – Drug Offenses
 - (4) Section 5.66.010 – Criminal Damage to Property
 - (5) Section 5.66.050 – Criminal Trespass
 - (6) Chapter 5.72 – Obstruction of Legal Duty
 - (7) Chapter 5.88 – Unlawful Use of Weapon
 - (8) Section 5.48.010 -Loitering
 - (9) Section 5.48.038-Failure to Vacate Premises of Entertainment Establishment
 - (10) Section 5.48.035-Loitering at Entertainment Establishments
 - (11) Section 5.12.010-Tampering with an Automobile
 - (12) Chapter 5.42-Larceny
- (b) The imposition of the fines for offenses established in subparagraph (a) shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof, except that the court may order that

the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.01.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

- (c) Whenever a defendant has been placed on probation or parole from a conviction of an offense set forth in subsection (a), the municipal court judge may impose a mapping restriction upon such defendant. A mapping restriction prohibits the defendant from entering into or remaining within the Old Town Entertainment District. A copy of such mapped area shall be provided to the defendant and shall be entered as part of the court record and as a condition of the defendant's probation.
- (d) Any person who is placed on probation or parole upon a conviction for an offense listed in subsection (a) who is subject to the mapping restrictions by the court and who knowingly and willfully fails to comply with the mapping restriction, shall be punished by a fine not to exceed \$1,000.00 or by imprisonment of not more than one year, or by both such fine and imprisonment."

SECTION 7. Section 5.05.040 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Chief of Police Responsibilities in the Old Town Entertainment District.

- (a) The Chief of Police and/or his designees are authorized to temporarily close streets in the Old Town Entertainment District or allow pedestrian only traffic on streets in order to facilitate the safe and orderly dispersal of patrons from the Old Town Entertainment District.”

SECTION 8. Section 5.48.035 of the Code of the City of Wichita, Kansas shall be created to read as follows: **“Loitering prohibited near Entertainment Establishments.**

- (a) **Purpose.** The City of Wichita finds that persons who loiter outside an entertainment establishment negatively impact the public’s safety and welfare. The areas outside these establishments have become the site of assaults and batteries. Prohibiting loitering outside entertainment establishments will assist law enforcement and club security staff in protecting entertainment establishment patrons and may decrease the incidence of crimes at these establishments by providing law enforcement officers with an additional crime-fighting tool that does not infringe on any person’s basic rights.
- (b) **Prohibition.** In the City of Wichita, it shall be unlawful for any person to loiter outside any entertainment establishment between the hours of 11 p.m. and 3 a.m.
- (c) **Definitions.**
 - (1) For the purpose of this Section, unless a person is engaged in an activity described in Subsection (d), a person loiters

outside an entertainment establishment when the person remains as a pedestrian for a period of over three (3) minutes within twenty-five (25) feet from the entrance or exit of the entertainment establishment or within twenty-five (25) feet from any point of any lines formed at the entrance to an entertainment establishment.

(2) For the purposes of this section, an entertainment establishment is defined as a place of entertainment which is licensed pursuant to Chapter 3.30 of the Code of the City of Wichita.

(d) **Application.** This ordinance is not intended to prohibit any person from engaging in any lawful activity that must be conducted within twenty-five (25) feet from the entrance or exit of an entertainment establishment or twenty-five (25) feet from any point of any lines formed at the entrance to an entertainment establishment such as (1) waiting in line to enter an entertainment establishment, (2) being present in a smoking area designated by the entertainment establishment outside the entertainment establishment for patrons, or (3) waiting for a bus at a bus stop or waiting in line to enter a theater or other business. Lawful activity does not include any activity that can be conducted more than twenty-five (25) feet from the entrance or exit of the entertainment establishment or more

than twenty-five (25) feet from any point on any lines formed at the entrance to an entertainment establishment.

(e) **Warning Required.** Before any law enforcement officer may cite or arrest a person under this subsection, the law enforcement officer or personnel working for the entertainment establishment must warn the person that his or her conduct is in violation of this ordinance and must give the person an opportunity to comply with the provisions of this ordinance.

(f) **Penalties.**

(1) **First Conviction.** Any person violating any provision of this Section shall be guilty of a misdemeanor and upon a first conviction shall be punished by a fine not to exceed \$500 or by imprisonment of not more than six months, or by both such fine and imprisonment.

(2) **Subsequent Convictions.** Any person violating any provision of this Section a second time, within a one year period, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$200 or more than \$500, or by imprisonment of not more than six months, or by both such fine and imprisonment. Any person violating any provision of this Section a third time, and each subsequent time, within a three year period shall be guilty of a misdemeanor and shall be punished by a fine of not less

than \$500 or more than \$1,000, or by imprisonment of not more than six months, or by both such fine and imprisonment.

(g) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:

- (1) 'Conviction' includes being convicted of a violation of this section, or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging violation of this section.
- (2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibit or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;
- (3) Only convictions occurring in the immediately preceding five years shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offense, whichever is applicable.
- (4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."

- (h) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Section.”

SECTION 9. Section 5.48.038 of the Code of the City of Wichita, Kansas shall be created to read as follows: “**Failure to Disperse from Entertainment Establishment.**

- (a) It shall be unlawful for any person to fail to vacate the licensed premises of an entertainment establishment and/or property abutting or adjacent thereto in a timely and orderly manner.
- (b) It shall be unlawful for any person to willfully impede any other person from vacating the premises of an entertainment establishment in a timely and orderly manner.
- (c) **Definitions.** For the purposes of this section, the words will have the meanings set for the below:

‘Abutting’ means touching or directly contiguous to.

‘Adjacent’ means an area which is no further than twenty-five feet from the licensed premises, unless otherwise provided by a specific section of this Code.

‘Entertainment Establishment’ means a place of entertainment which is licensed pursuant to Chapter 3.30 of the Code of the City of Wichita.

‘Vacate in a timely and orderly manner’ means a person shall not remain in or upon the property or licensed premises or the property adjacent or abutting the licensed premises, without just or legal cause, after being asked to leave by the owner, licensee, manager, responsible person or person entitled to possession or in control of the property thereof or willfully impede other persons from vacating the premises in a timely and orderly manner.

- (d) Law enforcement officers of the City of Wichita or other individuals designated by the City may request persons to vacate, disperse, or leave property abutting or adjacent to a licensed entertainment establishment upon request of the owner of said property.
- (e) For the purposes of this section, law enforcement officers shall be considered to be “in control” of all city owned property including parking lots abutting or adjacent to licensed premises.”

SECTION 10. Section 5.48.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty.

Unless otherwise specified, any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or one year imprisonment, or both such fine and imprisonment.”

SECTION 11. The originals of Sections 3.30.020, 3.30.075, 3.30.078 and 5.48.050 are hereby repealed.

SECTION 12. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 20th day of May, 2014.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law